

## REMARKS/ARGUMENTS

Applicants respond herein to the Office Action dated April 21, 2011.

Claims 1-4, 6-8 and 10-12 are pending in the application. Claims 5 and 9 have been canceled.

Claims 1-4, 6-8 and 10 were rejected under 35 USC 103(a) as being unpatentable over Müller (US 6,379,349) in view of Desinger (US 6,723,094). Claims 11-12 were rejected under 35 USC 103(a) as being unpatentable over Müller in view of Desinger) and in further view of Crites et al. (3,568,660).

Sole independent claim 1 has been amended and specifies that the claimed surgical probe comprises:

“...a hollow body extending from the handle, the distal end of the hollow body integrally forming the distal electrode, with the hollow body being distally closed, made of metal and electrically conductive...[the] portion of smaller outside diameter is externally enclosed by and supports the proximal electrode and the insulator thereon, wherein the insulator electrically insulates the proximal electrode from the enclosed distal electrode...”

With reference to Figure 3 of the present application, the presently claimed structure requires two hollow elements rather than the single outer tube structure of the Müller reference. In claim 1, the hollow body 30 forms the distal electrode 16 and the proximal electrode 18 is formed by metal tube 40, with proximal electrode externally enclosing the smaller diameter portion of the hollow body of the distal electrode.

There are thus two hollow elements in the present claim 1: a) the hollow body of the distal electrode (integrated therewith, as a single unit) for fluid passage in the “interior thereof” and b) the metal tube of the proximal electrode which encloses the first hollow. Element 3 of the Müller reference, which comprises the distal electrode, is a solid rod. Outer tube 4 of Müller comprises the proximal electrode. Thus, Müller fails to teach the structure of claim 1 wherein the hollow body is integral with the distal electrode and further fails to provide the limitation of claim 1 of, “...a fluid passage in the **interior** thereof [of the hollow body], configured for passage of a cooling fluid **therein**...”

Furthermore, the Desinger reference, in Figure 3, cited by the Examiner has no hollow body “configured for passage of a fluid therein” with element 14 being a conductive screw connector and element 40 being a bar shaped conductor (see col. 11, line 23 through col. 12, line

10). In addition, though the Examiner has posited that it would have been obvious to one skilled in the art to provide the small diameter and large diameter portions of the Desinger structure in the structure of Müller, to do so would have obviated a requirement of Müller and a limitation of claim 1. As described at column 5 of Müller, lines 13-64, pointed element of distal electrode 3 is retracted into tubular proximal electrode 4 to provide the requisite puncturing structure. Claim 1 also requires a configuration of the probe to have, "...mechanical strength...that permits insertion of the shaft into the body tissue..." With the Examiner's suggested combination, the Desinger structure is incapable of being retracted to provide the requisite puncturing structure of Müller. For element 3 of the Müller structure to be retracted into the tube 4 thereof, element must be of smaller diameter and thus there is no providing of the claimed approximate equality of the two electrodes. The sliding fitment of the Müller structure precludes this limitation. Thus, none of the cited references provide the present claims even in combination.

Accordingly, the Examiner is respectfully requested to allow the claims as amended and pass this case to issue.

THIS CORRESPONDENCE IS BEING  
SUBMITTED ELECTRONICALLY  
THROUGH THE PATENT AND  
TRADEMARK OFFICE EFS FILING  
SYSTEM ON JULY 6, 2011.

Respectfully submitted,



---

Max Moskowitz  
Registration No.: 30,576  
OSTROLENK FABER LLP  
1180 Avenue of the Americas  
New York, New York 10036-8403  
Telephone: (212) 382-0700

MM:lac:mw